

**32: CERTIFICATION PROCEDURES**

**32.1: Filing of Petition**

“There was no petition for new unit determination filed by a labor organization or a group of employees, as required by **ARM 24.26.512.**” **DC #22-77 District Court (1979)**

**32.13: Filing of Petition – Timeliness**

“**MAC 24-3.8(14)-S8090(1)(b)** ... states: ‘The petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement, or upon the termination date thereof.... [T]he purpose of the rule is to prevent strife and unrest by not making the bargaining representative and the labor agreement subject to challenge except on a very limited basis, thereby providing for stability and preventing constant strife.’” **UM #5-76**

“[A] contract bar doctrine is designed to insure a period of labor peace because a petition can only be filed during the ninety-sixty day period before the termination of a collective bargaining contract.” **UD #19-75**

Subsection (5)(a) of **24.26.622 ARM** “provides that the petition must be filed not more than 90 days before, and not less than 60 days before the termination date of the previous collective bargaining agreement or after the termination of the existing collective bargaining agreement.” **EP #1-86.**

“Although a valid contract between AFSCME and the City was in existence, the expired contract with the County is sufficient to fulfill the requirement of the [time for filing] rule because the petition was, in part, filed on behalf of the County. The existence of the AFSCME—City contract should not bar the filing of a petition by the County in this situation, if all other provisions of the rules are met.” **EP #1-86.**

“The determinative issue in this matter rests on the four challenged housekeeping ballots. Because Montana law, ARM 24.26.614 specifically provides a procedure for counter-petition within five working days after receipt of the petition for unit determination, and the employer failed to petition within that period, the challenge ballots must not be counted.” **UD #24-90.**

**32.141: Filing of Petition – Bars to Petition – Contract**

The Hershey Chocolate Company case states: “the [National Labor Relations] Board has held that a schism removing a contract as an election bar exists where: (1) there is a basic intra-union conflict; (2) as a result of this basic intra-union conflict, the employees in the bargaining unit have taken action that has

created such confusion in the bargaining relation that stability can be restored only by an election; (3) there has been an open meeting, with due notice to members, for the purpose of considering disaffiliation; (4) a disaffiliation vote is taken within a 'reasonable period' of time the conflict arises; (5) the employers are faced with conflicting representation claims'." **UM #5-76**

"A schism deals with a group of employees within a unit who, because of corruption of leaders, political affiliations of the leaders, or some other major deficiency in the present leadership, disaffiliates with the present bargaining representative and forms its own unit representative and demands the employer deal with it. The resulting disruption is so great, the only solution is an election." **UM #5-76**

"The Board's Rules and Regulations do provide for a 'contract bar'." **UD #19-75**

"This Board follows the National Labor Relations Board and proven labor relations stability in providing for the traditional 60-90 day "window" period by adoption of the following rule: **ARM 24.26.543(2)**...." **DC #15-79**

"In Deluxe Metal Furniture Company ... the National Labor Relations Board established the 'premature-extension doctrine' and determined that a prematurely-extended contract will not bar an election if the petition is filed over 60 but not more than 90 days before the terminal date of the original contract. A contract will be considered prematurely extended if during its term the contracting parties execute an amendment thereto or a new contract which contains a later terminal date than that of the existing contract." **DC #15-79**

See also **UDs #26-75 and #27.75.**

"The National Labor Relations Board has established the 'contract bar' doctrine in an effort to stabilize the employer-union relationship. The doctrine provides that a current and valid collective bargaining agreement will ordinarily prevent the holding of a representation election within a specified unit of employees for a certain period of time." **DC #16-89.**

"In order for a collective bargaining agreement or contract to 'bar' an otherwise timely petition for decertification, the contract must meet certain standards. The contract must be reduced to writing and executed by the parties; must contain substantial terms and conditions of employment; and, must have a definite duration. The contract in question in this instant matter meets the standards to create a bar to the Petition for Decertification as filed by the Petitioner. The contract, although being a three page proposal from the Employer, did address all elements of the complete collective bargaining agreement between the parties." **DC #16-89.**

**32.142: Filing of Petition – Bars to Petition – Election within Preceding Year**

See **UD #11-77**.

**32.15: Filing of Petition – Amendments**

Mutually acceptable amendment to a petition is allowed at the hearing. **UD #16-74**

**32.16: Filing of Petition – Withdrawal**

Union allowed to withdraw petition for unit determination at hearing even though 30 percent proof of interest had been previously filed for that union. **UD #9-74**. See also **UDs #15-74 and #16-74**.

**32.18: Filing of Petition – Waiver of Procedures [See also 09.6.]**

See **UDs #56S-74, #5-77, #6-77, #22-77, and #21-78**.

**32.221: Showing of Interest – Nature of Showing – Authorization Cards**

“[E]mployer contended that the purpose of the authorization cards used by the Petitioner was misrepresented and the cards were gained by fraud.... The documentation of the 30 percent valid authorization card [showing of interest] requirement is an administrative function and cannot be challenged.” **UD #7-79**

**32.223: Showing of Interest – Nature of Showing – Employee Petition**

See **ULP #14-77**.

**32.227: Showing of Interest – Nature of Showing – Coercion or Misrepresentation**

See **UD #7-79 and ULP #14-77**.

**32.51: Hearing Procedures and Conduct – Parties**

The Montana Federation of Teachers petitioned the Board of Personnel Appeals for a new unit determination. Since the Montana Education Association was the recognized bargaining agent for the professional employees of the Employer, the Hearing Examiner treated the Association as a party to the hearing, and the Board of Personnel Appeals ordered that the Montana Education Association be treated as a formal party to the proceedings. **UD #9-79**.

**32.52: Hearing Procedures and Conduct — Notice**

“On November 28, 1990 the Board of Personnel Appeals issued a Notice of Unit Determination Proceedings identifying the proposed unit.... Also included...were the rules explaining to Liberty County Commissioners statutorily established election procedures..... ‘The rules of the Board provide that an employer may counter-petition upon the petitioner....’ The employer did not file a counter petition.” **UD #24-90.**

**32.6: Intervention [See also 32.232, 32.61, 32.62, 36.116, and 36.216.]**

See **UD #1-80.**

**32.61: Intervention – Procedures [See also 32.6]**

“Although AFSCME did not properly intervene in this proceeding, the hearing examiner included them as a party because he considered them an indispensable party.” **UD #39-74**

See also **#36-74.**

The petition was “filed in accordance with **24.26.6.22(1) ARM** inasmuch as the . . . Division had claims for exclusive representative status made by two labor organizations.” **EP #1-86.**

**32.62: Intervention — Timeliness [See also 32.6.]**

“The petition to intervene by the four incumbent unions, the Montana Vo-Tech Maintenance Employees Council, is hereby denied because it was not timely filed in accordance with **24.26.618 ARM** which states in part: ‘PETITION TO INTERVENE (1) Within twenty (20) days from the first day of posting of the Notice of Unit Determination proceedings, any labor organization or group of employees may file a Petition to Intervene...’” **UD #15-87.**

**32.74: Review of Hearing Decision by Board of Personnel Appeals — Conclusions of Law**

“It is ordered that the Findings of Fact, Conclusions of Law and Recommended Order be amended so that the eligible vote shall be all part-time faculty employed by Flathead Valley Community College who taught during spring quarter 1989 (April 1989 through June 1989), autumn quarter 1989 and winter quarter 1990 (September 1989 through March 1990).” **UD #16-89.**

“It is found that the Hearing Examiner abused his discretion as a matter of law in concluding that the position at issue was not a confidential employee properly excluded from the bargaining unit.” **UD #23-90.**

**32.81: Orders, Rulings and Decisions of Board – Dismissal of Petition [See also 71.227.]**

Petition by employer for bargaining unit determination dismissed by the Board of Personnel Appeals for lack of stenographic record of prior hearing. **UD #18-74**

Petition denied on grounds that another union already has contract. This decision noted that a petition for decertification is the appropriate action. **UD #27-75**

See also **UDs #27-74, #19-75 and #11-77; UM #5-76; UCs #1-81 and #2-84 and CC #2-81.**

**32.83: Orders, Rulings and Decisions of Board – Direction of Election**

See **UDs #7-79 and #6-84.**

See **UDs #4-85, #1-86, #15-87, #6-88, #12-88, #5-89, #7-89, and #16-89.**

**32.9: Certification**

“This action was brought under **39-31-206 MCA** which requires that certification as exclusive representative be extended or continued only to a labor organization the written bylaws of which provide certain rights and safeguards.” **CC #2-81**

“Regardless of the use of the work ‘certification’ in **24-26.603 ARM**, I find it is necessary to define certification as the formal and binding acknowledgement of exclusive representative status, whether that acknowledgement is by means of designation by this board or by recognition by the public employer.” **CC #2-81**

“A labor organization can become the exclusive representative of a bargaining unit in one of two ways: by ‘designation by the Board of Personnel Appeals, or by ‘recognition’ by the public employer. The organization which receives the majority of votes in the election is ‘certified’ by the Board of Personnel Appeals as the exclusive representative. This ‘certification’ is the only way in which the Board of Personnel Appeals may ‘designate’ an exclusive bargaining agent. Thus, the term ‘certification’ as used in Section **39-31-206** must be viewed as having a specific meaning, which meaning unquestionably comprehends the term ‘designate’ ... There is nothing in the Collective Bargaining for Public Employees Act as originally propounded or amended which suggests [that certification also comprehends the term ‘recognition.’]” **CC #2-81 District Court (1984)**

"[T]he word 'certification' as used in Section **39-31-206** was not intended by the legislature to include recognition and for that reason the section has nothing to do with uncertified labor organizations which act as exclusive representatives of their membership by virtue of public employer recognition of them as such." **CC #2-81 District Court (1983)**

See **UDs #23-90, #24-90, and #8-91** and **ULP #13-90**.

**32.91: Certification – Board of Personnel Appeals Authority**

"Section **59-1602(6)** explicitly states that an exclusive representative can be designated by the Board or by the public employer." **UD #19-75**

"There are no grounds for this Board to deny continuation of certification of Local 1023 as the exclusive representative of the Complainants." **CC #2-81**

"Because of the conclusion noted above [that 'certification' does not include 'recognition'], it is our opinion that the respondent Board had no jurisdiction to hear or in any way dispose of the petitioner's original application and in doing so acted in excess of its statutory authority." **CC #2-81 District Court (1983)**

**32.92: Certification – Without Election**

"Although this Board has not designated Local 1023 as the exclusive representative of Complainants through formal representation proceedings under **39-31-202 MCA**, it functions as such and has been so recognized by the Department of Highways." **CC#2-81**

**32.93: Certification – Timeliness**

See **UD #11-77**.

"The March 2, 1992, challenges by Mr. Szeszycki and Mr. Fallows as to the inclusion of certain individuals within the bargaining unit must be dismissed because such objections constitute a collateral attack upon a final unit determination order to which no timely exceptions were filed or appeal taken." **UD #8-91**.

**32.95: Certification – Duration**

The ruling of the Hearing Examiner allowed for employees to enter into statewide bargaining unit if interest is shown at a later date. **UD #25-74**

**32.96: Certification – Challenge Periods**

See **UD #22-77**.

**32.97: Certification – Amendment**

“The rules of this Board state: ‘**ARM 24.26.104** Amending Petitions ... at any time prior to the casting of the first ballot in an election or prior to the closing of a case, upon such consideration as the Board considers proper and just’.” **UD #22-77**